ITR No. 19 of 1995

27.11.2007 Present: Ms. Vandana Kuthiala, vice counsel for the applicant.

Mr. Atul Jhingan with Mr. Amit S Chandel, counsel for the respondent.

The following two questions had been referred for the opinion of this Court:

"1. R.A. No. 286

Whether on the facts and in the circumstances of the case, the I.T.A.T. was right in law in allowing a sum of Rs.67,237/- paid on account of rent of guest house maintained by the assessee when there is specific provision for disallowance u/s 37(4) of the Income-tax Act, 1961?

2. R.A. No. 287

Whether on the facts and in the circumstances of the case, the I.T.A.T. was right in law in upholding the decision of the first appellate authority in directing the assessing officer not to reduce the amount of subsidy to arrive at the actual cost of assets u/s 43(1) of the Income-tax Act, 1961, for allowing depreciation?"

The first question is squarely covered by a judgment of the Apex Court in **Britannia Industries Ltd.** Vs. **Commissioner of Income Tax, W.B., Kolkata and another**, **(2006) 1 Supreme Court Cases 646**, where in Para-29 the Apex Court held as under:

"The only question which we are called upon to consider in the instant case is whether the expression "premises and buildings" referred to in Sections 30 and 32 and used for the purposes of business or profession would include within its scope and ambit the expression "residential accommodation including any accommodation in the nature of a guest house" used in sub-sections (3), (4) and (5) of Section 37 of the Act. While the two expressions can be similarly interpreted, a distinction has been sought to be introduced for the purposes of Section 37 by specifying the nature of building to be a guest house. In our view, the intention of the legislature appears to

> be clear and unambiguous and was intended to exclude the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purposes of a guest house of the nature indicated in sub-section (4) of Section 37. When the language of a statute is clear unambiguous, the courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statute. If the legislature had intended that deduction would be allowable in respect of all types of buildings/accommodations used for the purposes of business or profession, then it would not have felt the need to amend the provisions of Section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in sub-section(5) of Section 37 and the provisions of Sections 31 and 32 would have been sufficient for the said purpose. The decisions cited by Dr. Pal contemplate situations where specific provision had been made in Sections 30 to 36 of the Act and it was felt that what had been specifically provided therein could not be excluded under Section 37. The clarification introduced by way of sub-section(5) to Section 37 was also not considered in the said case."

In view of the law laid down by the apex Court, question No.1 is answered in favour of the revenue and against the assessee.

As far as second question is concerned, this Court in ITR No.10 of 1995 and other connected matters decided on 11.9.2007 has decided the same question against the revenue, in view of the law laid down by the Apex Court in **Commissioner of Income-tax, Hyderabad** Vs. M/s **P.J. Chemicals Ltd.**, **AIR 1994 Supreme Court 2727** wherein it was held as follows:

> "The expression "actual cost" needs to be interpreted liberally. The subsidy of the nature granted

> by Govt. to industries, does not partake of the incidents which attract the conditions for their deductibility from "actual cost". Government subsidy, it is not unreasonable to say, is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as or geared to a percentage of such cost. If that be so, it does not partake of the character of a payment intended either directly or indirectly to meet the "actual cost."

In view of the law settled by the apex Court and followed by this Court in ITR No. 10 of 1995, question No. 2 is answered in favour of the assessee and against the revenue.

A copy of this judgment under the signature of the Registrar General of this Court be forwarded to the Tribunal.

(Deepak Gupta), A.C. J.

27th November, 2007 **(V.K.Ahuja),J.**
(BSS)